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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,211	02/24/2004	Thomas Oval Wood		3042

7590 10/11/2006

Thomas O. Wood, M.D.
4264 Nellwood Lane
Memphis, TN 38117

EXAMINER

ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3771

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,211

Applicant(s)

WOOD, THOMAS OVAL

Examiner

Shumaya B. Ali

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 7-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

In response to the office action mailed on 3/7/06 the Applicant has amended claims 1 and 2, and cancelled claims 3-6. Currently claims 1,2,7-14 are pending in the current application.

Response to Arguments

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Specification

Claim 2 is objected to because of the following informalities: limitation "non-continuous" lacks positive recitation in the specification. Appropriate correction is required.

Claim 10 is objected to because of the following informalities: disclosure fails to support "secured into position between the chin and chest with adhesive straps covered by removable labels of "CHIN" and "CHEST"." A close review of Applicant's disclosure suggests that securing is done with an adjustable strap. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,2,7-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Limitation of "selected shape and selected dimensions and angles of length and height" cited in **claim 1** is indefinite because Applicant's disclosure only supports a u-shaped device, therefore with a broader recitation of "selected shape and selected dimension and angles of length and height," what would be a reasonable shape or dimension recited by the claimed limitation can not be determined. Therefore, the meets and bounds of claimed limitation is considered vague. **With respect to claim 10**, it is unclear how a "label" is used for securing purpose. Should securing be done by both labels and adjustable strap? Clarification is required. **With respect to claims 12-14**, claims are limiting use/function of a head and neck support device rather than structure(s) supporting such use/function, therefore what structure(s) being limited by claims 12-14 are unclear.

Claim 7 recites the limitation "the end labeled "CHIN" and "CHEST"" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 9-11 recite the limitation "the chin and chest"" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,9, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by DeSantis US Patent No. 4,536,905.

As to claim 1, DeSantis in a anti-snore pillow discloses an airway, neck, and head support used to help stabilize the airway, neck, and head of a supine patient comprising: a device (fig.1, 1) constructed of a continuous piece of a preferred foam material forming top, bottom, and side exterior surfaces to be cut to a selected shape and selected dimensions and angles of length and height (see figs. 1-4, reference objects 7 and 8; col.2 lines 7-24)

As to claim 2, DeSantis in a anti-snore pillow discloses wherein said device, as cut to a selected shape and selected dimensions and angles of length and height, has one continuous exterior end that is thicker (see fig.4, 9) than an opposing non-continuous end (see fig.4, opposing end of 9) on which is introduced an opening of

inward disposition of a selected length and width, as in a neck trough (see labeled fig.1 attachment below).

As to claim 9, DeSantis discloses wherein said device is considered to fit a supine patient, given local or monitored anesthesia care, with the neck through fitting over the front of the neck and the exterior top and bottom surfaces of the thicker end touching both the chin and chest, keeping the airway open by elevating the chin and stabilizing the head (col.1 lines 25-45).

As to claim 12, DeSantis discloses wherein said device is capable of additionally be used by reclining or supine patients for purposes of providing comfort to the back of the neck and head, as a pillow, prior to the delivery of anesthesia. Applicant is reminded that functional limitations are not given patentable weight in an apparatus claim (see figs. 1-3, col.1 lines 25-45).

As to claim 13, DeSantis discloses wherein said device is capable of additionally designed to be placed in various selected positions behind the head to provide alternate means of keeping a supine patient's airway open, chin elevated, and head still during local or monitored anesthesia care. Applicant is reminded that functional limitations are not given patentable weight in an apparatus claim (see figs. 1-3, col.1 lines 25-45).

As to claim 14, DeSantis discloses wherein said device is capable of further designed to enable the user to rotate it around the patient's neck or behind the head for selected positions. Applicant is reminded that functional limitations are not given patentable weight in an apparatus claim (see figs. 1-3, col.1 lines 25-45).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeSantis US Patent No. 4,536,905

As to claim 8, DeSantis does not explicitly disclose wherein said device is a continuous piece of polyurethane foam cut to its selected angles and dimensions by appropriate foam cutting saw, however it is inherent that the dimensions of DeSantis's

pillow would have resulted from shaping foams with a known cutting device (col.2 lines 7-24).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeSantis US Patent No. 4,536,905 and Kazmierczak et al. US Patent Application Publication No. 20050010147 A1 and in view of Pujals Jr. US Patent No. 4,708,129

As to claim 10, DeSantis discloses claimed invention as applied to claim 1 with the exception of wherein said device is further secured into position between the chin and chest with adhesive strips covered by removable labels of "CHIN" and "CHEST" and with an adjustable strap. Applicant's CHIN or CHEST marking secured with an adhesive strips provides an indicator to a user or an operator to properly position or secure the support device. Kazmierczak et al in a shoulder sling teaches pillow support with an indicator line (see figure 3, 148), which aids a Physician in properly fitting the sling to the wearer (see abstract). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the pillow of DeSantis in view of Kazmierczak et al. in order to provide markings/indicators/labels on the pillow because doing so would have provided an indicator for proper fitting of the pillow. Furthermore, head and neck support with adjustable strap is known in the art. Pujals Jr. in a cervical occipital support teaches A brace 10 is held in place by a foam collar 12 which surrounds the user's neck and the brace 10 to hold the brace in close conformity with the posterior region of the user's neck shoulders and lower skull

(see fig.1, col.4 lines 18-25). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the device of DeSantis as modified by Kazmierczak et al. in view of Pujals Jr in order to provide an adjustable strap doing so would have secured the supporting device in close conformity with user's head and/or neck.

As to claim 11, DeSantis discloses Claim 11 (original): The airway, neck, and head support device of claim 10 wherein the strap used with said device is made of a flexible material, is long enough to extend completely around the device, and is secured, based on the size of the patient's head and length of the neck, with a tab. Pujals Jr. further teaches continuously adjustable attachment means such as Velcro.RTM ("tab") fastening system straps for holding the brace shell on the user's neck such that the degree of tightness of the shell against the user's neck and head is infinitely adjustable ("flexible" and "long enough") (see col.2 lines 50-65). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the device of DeSantis as modified by Kazmierczak et al. in view of Pujals Jr in order to provide long extended straps with tab doing so would have allowed infinite adjustability while securing the supporting device in close conformity with user's head and/or neck.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Henry Bennett
Supervisory Patent Examiner
Group 3700

Shumaya B Ali
Examiner
Art Unit 3743
9/30/06

